



CITY OF FAIRFAX

Department of Community Development & Planning

Special Exception SE-14090033

PUBLIC HEARING DATE

October 7, 2014

APPLICANT

Anne Wagner & Allyn Howe
property owners

AGENT

Stephen K. Fox, attorney/agent
10511 Judicial Drive, Suite 112
Fairfax, VA 22030

PARCEL DATA

Tax Map ID
57-3-((20))-024

Street Address
10629 Legacy Lane

Zoning District
RPD Residential Planned District
TOD Old Town Fairfax Transition
Overlay District

APPLICATION SUMMARY

Request of Anne Wagner and Allyn Howe, property owners, and Stephen Fox, agent, pursuant to City Code Section 110-369 for a special exception to City Code Section 110-680 to reduce the rear yard setback to 0.7-foot-wide (to allow an existing flagstone patio/terrace to remain) where a 10-foot-wide minimum rear yard setback is required as shown in the typical lot detail on the approved site plan for Royal Legacy Commons in the Residential Planned Development (RPD) and Old Town Fairfax Transition Overlay districts on the property located at 10629 Legacy Lane and more particularly described as Tax Map Parcel 57-3-((20))-024.

STAFF RECOMMENDATION:

In consideration of this application SE 14090033 with the City Code Section 110-369(6), staff recommends that the BZA deny the request to reduce the rear yard setback from 10 feet to 0.7 to accommodate the existing irregularly shaped flagstone patio.

However, should the BZA decide to approve the applicant's request, staff recommends the following development conditions:

1. The applicant, and any future owners, successors and assigns of the property, shall ensure the patio remains in its current configuration as shown on the plat entitled Lot 24-Royal Legacy Commons, prepared by Christopher Consultants, dated 9/2/14 and submitted with this application.
2. The applicant shall submit to the Zoning Administrator for review and approval, a private storm drainage easement on the common open space to maintain their drainage outfall.
3. The applicant shall ensure the storm drain easement is recorded among the Land Records of Fairfax County.

SUMMARY

The property is zoned RPD and Old Town Fairfax Transition Overlay District and consists of 0.11 acres in the newly formed Royal Legacy Commons subdivision. The single-family detached structure was constructed in 2014 and contains approximately 2,942 square feet of living space. The applicant has submitted the application because of the construction of a flagstone patio that varies in width, existing in the rear of the property within the 10' rear setback.

REQUEST

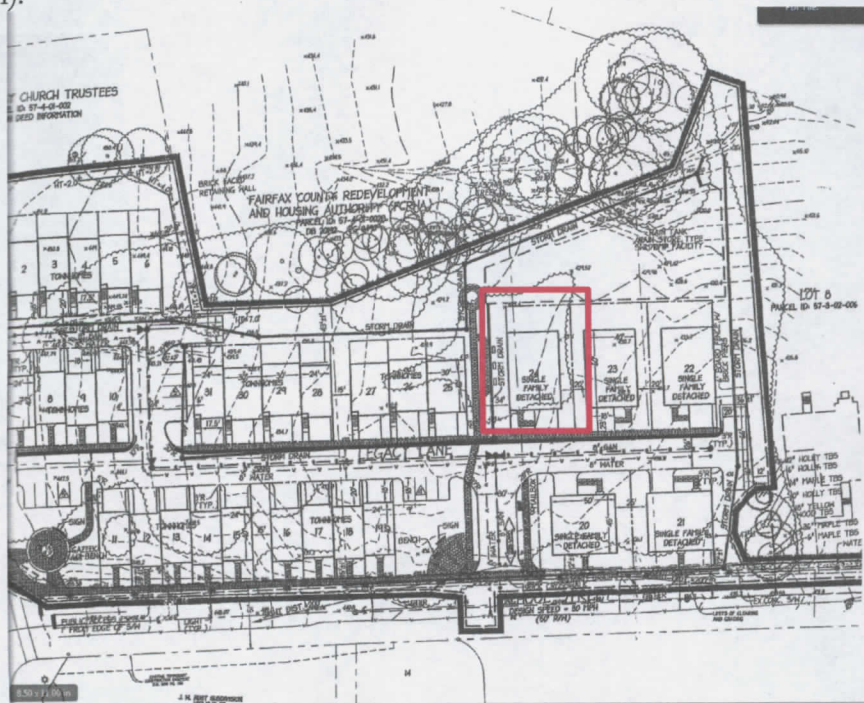
The applicant requests a Special Exception in conformance with City Code Sections 110-369 and 110-680 to allow a reduction of the rear yard setback to a minimum of 0.7 feet for the flagstone patio to remain (where 10 feet are required from the established rear yard property line).

The irregularly shaped patio varies its distance from the rear yard property line with 0.7 feet on the western side, 5.5 feet in the middle and 1.7 feet on the eastern side. The patio is shaped like a peanut cut lengthwise. Because the entire patio was not located a minimum of five feet from the rear lot line administrative approval by the Zoning Administrator was not possible pursuant to City Code Section 110-680. See Analysis of Criterion discussion.

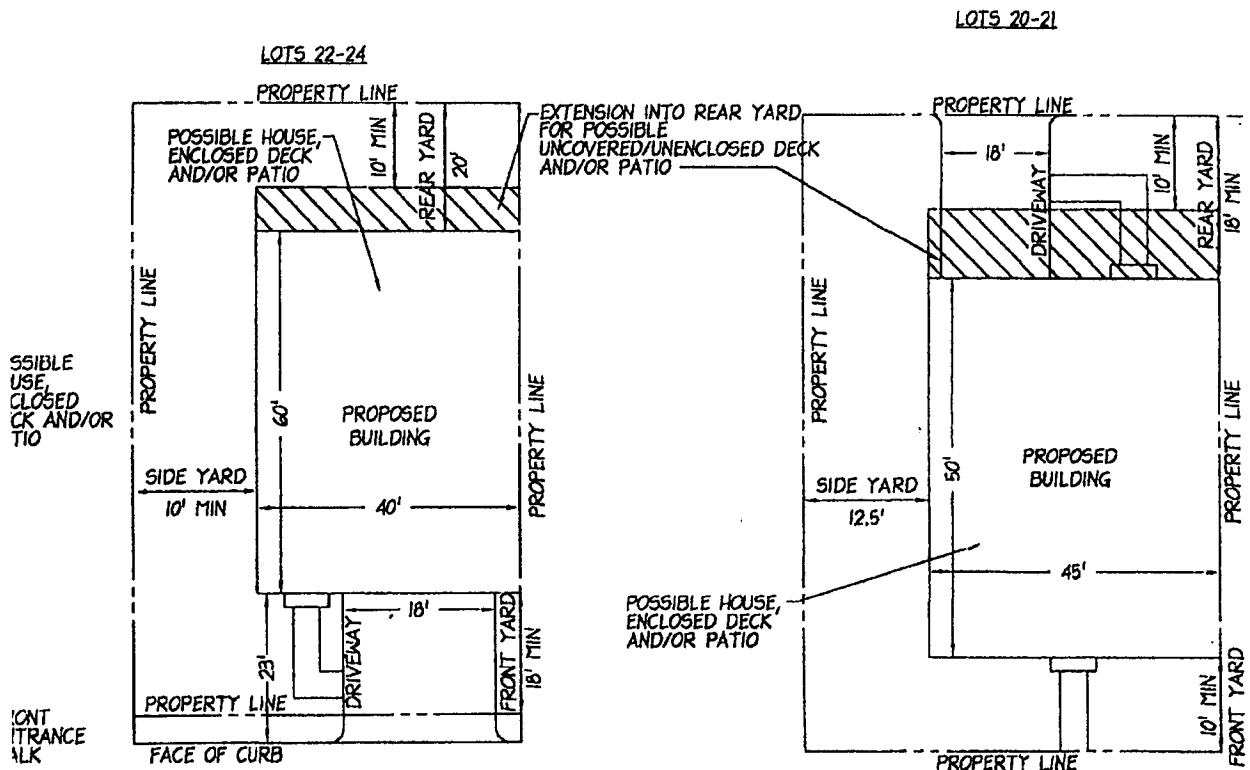
The typical layout shown on the General Development Plan (GDP) and approved with Z-08070013 in the RPD District shows no structures within the 10 foot minimum required rear yard setback. The patio is shown to be located at its closest point a distance of 0.7 feet from the rear property line.

BACKGROUND

The approved GDP shows the subject property as a single-family detached home on Lot 24 (third house from right on plan).



The Notes and Tabulations sheet of the GDP shows the following typical lot detail for Lots 22 - 24 which depicts a rear yard 20 feet deep. Within the 20-foot deep rear yard is an area (hatched pattern) 10 feet from the rear yard setback with the note "extension into rear yard for possible uncovered/unenclosed deck and/or patio." The subject patio is not shown on the approved GDP to be developed in the 10 foot minimum rear yard.



Proffer 1 states the following:

The general character of the development of the Property shall be in substantial conformance with the General Development Plan/Preliminary Site Plan (GDP/PSP), entitled "Royal Legacy Commons" dated July 27, 2009, as revised through April 9, 2010, prepared by Christopher Consultants.

Proffer 4 states in part the following:

- a. The Applicant shall form a Homeowners' Association (HOA) for the Property. The HOA shall be responsible for maintenance of the private streets, the parking area and adjacent sidewalk, stormwater management facilities and water quality facilities, retaining walls and adjacent easement, and the open space owned by the HOA. Further, the HOA shall be responsible for the enforcement of restrictions on the Property. The Applicant shall notify all prospective purchasers in sales literature and purchasers in writing at the time of settlement of these maintenance responsibilities and restrictions. Maintenance responsibilities shall include, but not be limited to, snow removal and travel aisle maintenance.

Proffer 6 states in part the following:

- a. No person will be allowed to construct any exterior structural improvements (including decks and fences) without the review and approval by the HOA, which shall be guided by architectural guidelines established by the Applicant, the homeowners' association documents, and approval of the City's Zoning Administrator and receipt of necessary building permits.

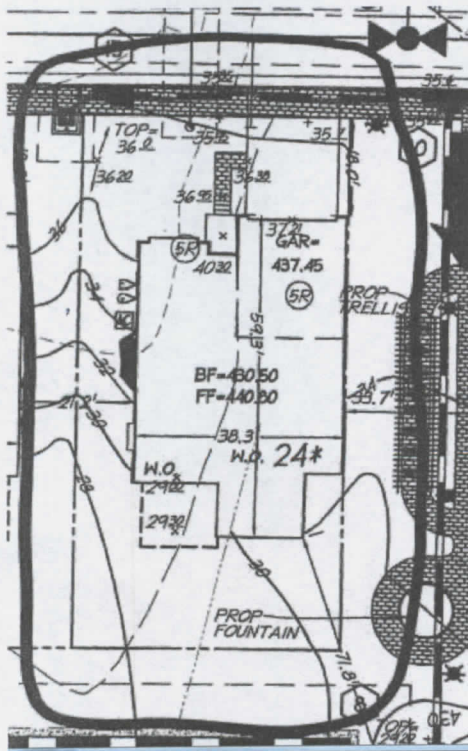
Chronology of Events:

On May 11, 2010, the City Council (CC) approved rezoning Z-08070013 (Royal Legacy Commons) to change 4.63 acres from the R-1 and R-2 Residential Districts to the Residential Planned Development (RPD) District with an overall density of 7.56 du/ac. The development was also rezoned to the Old Town Fairfax Transition Overlay District. The development of the Royal Legacy Commons subdivision is subject to the GDP revised through April 9, 2010, and Proffer Statement revised through April 27, 2010.

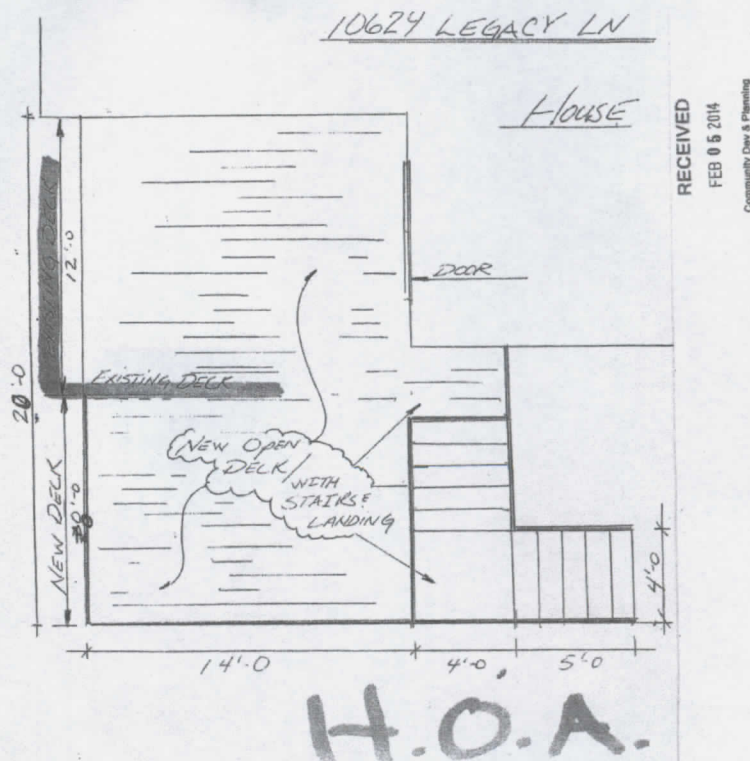
On May 3, 2012, the original Site Plan was approved which included a deck approximately 12 feet deep and 14 feet wide.

On September 15, 2013, the original building permit application, B-12-049499, for the new single family home at 10629 Legacy Lane was approved by the zoning staff showing the same deck as on the May 3 Site Plan. This deck was constructed by the developer.

Plat with Sep. 15, 2013 permit



Plat with Feb. 7, 2014 permit



On February 7, 2014, City zoning staff approved the building permit for the homeowner's proposal for an 8' x 14' deck addition with stairs. See the above right sketch. The building permit extended the total deck area to 10 feet from the property line. The building permit plans for the deck did not reference or include the patio. This deck was subsequently constructed and passed final City inspection on April 15, 2014.

On July 13, 2014, City of Fairfax zoning staff had a site visit to the Royal Legacy Commons subdivision to confirm that the development of the single family homes were built in conformance with the site plan. At that time zoning staff noticed that in the rear yard, of the subject property, there was construction of a patio. Upon questioning the homeowner, staff found that the homeowner had applied to the HOA and received approval for a patio and related items on May 21, 2014. (See Attachment #7 for their approval letter.) The HOA had not contacted the City zoning office on this matter. As no permits are required from the City to construct a patio, the homeowner had not contacted the City either.

On July 17, 2014, the Zoning Inspector visited the site and took the following photographs of the house and patio under construction. As the owner's agent states, in the justification of this application, at that time approximately 85% of the patio was constructed with only the laying of the flagstones on the concrete surface to remain. As the following Zoning Inspector photographs depict the concrete patio, flagstone retaining walls, flagstone perimeter walls and stairs are all level whereas the rear yard without this patio would have sloped down toward the western adjacent private lot and common open space.



Front of subject property,
10629 Legacy Lane



View of rear yard
of subject property,
10629 Legacy Lane



Rear view of subject
property,
10629 Legacy Lane
and
adjacent backyards.



Rear view
of subject property,
10629 Legacy Lane



View from side
of subject property,
10629 Legacy Lane

On July 28, 2014, the Planning Director, Zoning Administrator and agent for the applicant met to discuss alternatives to resolve the issue. The discussed options included:

- 1) Removal of the patio to pre-violation condition per the approved site plan;
- 2) City Code Section 110-680 (b) states that relief may be granted by the Zoning Administrator but this provision was found to not apply to this situation (see following analysis of this Section of the Code);
- 3) City Code Section 110-680 (a) states the filing of a special exception application for BZA consideration.

The property owner decided that their preference was to seek Special Exception relief from the restrictions of the typical lot detail.

Given the extent of construction that had already occurred, the owner proceeded to complete the construction of the patio to provide a stabilized, non-erosive surface.

On August 27, 2014, a notice of violation (NOV) was sent stating the date of violation was July 17, 2014, since that is the date the Zoning Inspector photographed the violation. The NOV issued describes the violation as failure to comply with the approved plan. Attached to the notice of violation were the approved plan, proffers approved with the zoning case and photographs of the rear of the property. These documents are in Attachment 6 of this staff report.

On September 9, 2014, this application was submitted by the agent for the owner, in pursuit of relief to allow the existing patio to remain.

In summary the development of the patio was due to incremental steps unforeseen by the City of Fairfax, the developer or owner. As stated by the owner's agent prior to construction of the existing patio the owner of the property approached the HOA with a proposed design for a larger patio than the patio the

developer would have built and the HOA approved the request. It needs to be noted that the City does not require a building permit for a patio construction. Consequently, the plat accompanying the building permit for the deck did not depict a patio for staff review.

ANALYSIS OF CRITERIA

The staff recommendation for this application is based on the analysis of the following criteria for Special Exception review as specified in City Code Section 110-680.

Section. 110-680. Exceptions.

- (a) Special exceptions. Notwithstanding any other provisions in this article, the board of zoning appeals may, by special exception, modify the minimum yard and building setback requirements, for accessory structures and attached decks only, on established individual residential lots in approved planned development districts, in accordance with the provisions in section 110-369.

This development is within an approved planned development district. The reduction of the rear yard setback for the accessory structure of a patio/terrace is going through a special exception heard by the Board of Zoning Appeals because the request is for a structure closer than 5 feet. City Code Section 110-680(b), which follows, explains why the applicant had to file for a special exception heard by the Board of Zoning Appeals.

- (b) Administrative exceptions. Notwithstanding provisions to the contrary, the zoning administrator is authorized to permit the location of attached decks, porches and patios that intrude into the required minimum yards and setbacks within residential portions of this district, provided that:

- (1) "The property owner shall make application to the zoning administrator requesting an administrative exception and shall provide all information deemed necessary to consider the application;"

Unsatisfied: When the Zoning Administrator met with the agent for the applicant discussions included an analysis of the following to determine that an administrative application was not possible because the property owner sought more than the minor relief needed for reasonable improvement to connect stairway with the basement level entrance.

- (2) "The applicant shall submit evidence of approval of the requested exception by the applicable homeowners' association;"

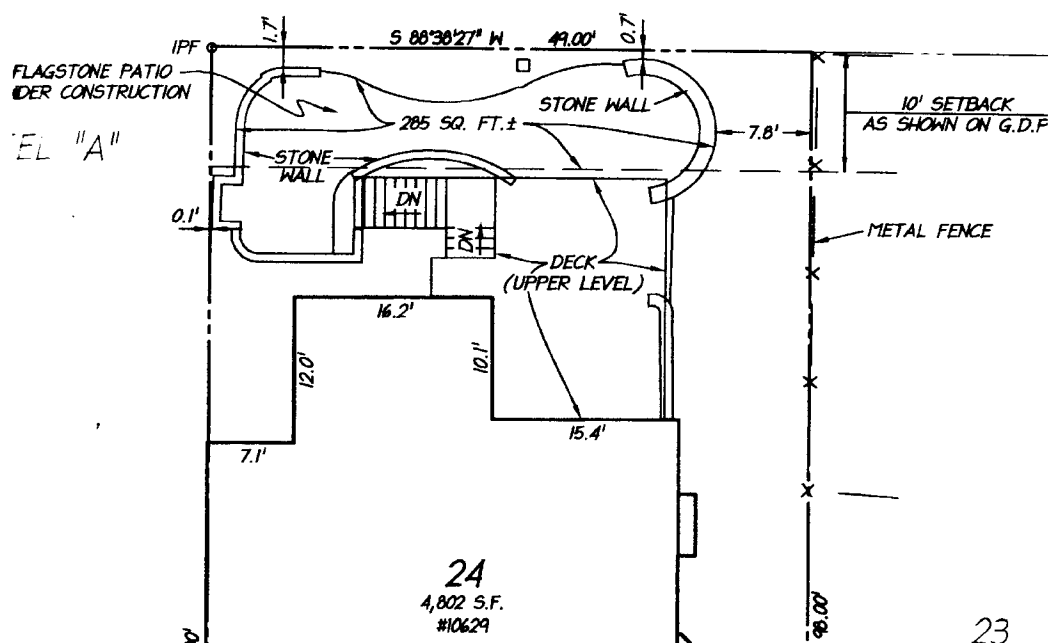
Unsatisfied: See Attachment #7 for the homeowners' association approval of the patio prior to its construction. Consequently, the HOA approval was flawed.

- (3) "The proposed structure shall be permitted no closer than five feet from any rear property line. This provision is applicable only if such rear property line is contiguous to common open space within the planned development. For the purpose of this section, common open space shall not include existing or proposed streets, or required open space areas that are located along the perimeter of the planned development;"

Unsatisfied: The owner of the property has inadvertently taken the community's common open space by reducing the private grassy area for their personal benefit. By increasing the impervious surface of this lot to the maximum the patio reduces the grassy area on the private lot to a minimal amount. Alternatively a

walkway wrapping around the stairs and deck connecting the stairs to the lower level entrance is a minor reduction which would provide a functional connection and substantially preserves the grassy area. As constructed any desire for a grassy area (i.e. dog walking, children playing, etc.) must go onto the common open space instead of using the private yard area. In effect the increased impervious surface has placed more pressure for use of the community's common area.

A subtraction of the constructed patio at 285 square feet minus what is permitted at 235 square feet leaves a total of 50 square feet more than could have been permitted with an administrative approval by the Zoning Administrator.



- (4) "The proposed structure shall be permitted no closer than one foot from any side lot line, provided that this exception is necessary to provide reasonable access to an existing or proposed entrance to the principal or accessory structure; and"

Satisfied: This criterion is met since the patio is a total of 7.8 feet from the western property line and approximately 1.5 feet from the eastern property line. The rear entrance to the lower level is underneath the deck.

- (5) "The zoning administrator shall grant such exception, in whole or in part, only after determining that the application meets the criteria contained in section 110-369."

Unsatisfied: The patio as currently constructed fails to satisfy criterion #2, 3 and 4.

The staff recommendation for this application is based on the analysis of the applicable standards for Special Exception approval provided in City Code Section 110-369(6):

Section. 110-369. Special Exceptions.

(6) The Board of Zoning Appeals may grant a Special Exception only after determining that the application meets the following criteria:

- a) The site for the proposed use is adequate in size and shape, and the proposed use will not negatively affect adjacent property or the surrounding area.

The subject property is located on Legacy Lane. The lot is 49 feet wide and the house is 39 feet wide. The lot is 98 feet deep and the house is approximately 59'3" deep.

The enlarged and approved deck is located on the west side of the rear and is 20 feet deep. Beyond the deck is an irregularly shaped flagstone patio that could be described as a peanut sliced in half lengthwise, with stone and flagstone walls on either end. There are two similarly-sized single-family homes to the east.

Staff finds that the size and shape of the subject property is adequate for the existing home. The size of the subject property is not adequate for the proposed depth of the patio since it removes most of all grassed area in the rear of the subject residential lot.

The adjacent property to the south is common area that contains a storm water detention pond. The adjacent property to the east contains the community's water feature amenity. Rainwater and overspray from the water feature collect on the subject property's enlarged impervious area. An under drain, added with the patio is located on the western side and acts to channel concentrated drainage flow onto the common open space. This forces the concentrated flow from the underdrain directly onto the common open space. The outlet design was not in the original drainage design and could create erosion or other negative impacts to the common area.

Staff recommends that a 10' by 10' private storm drainage easement be placed over the outfall area to ensure that the owner of Lot 29 has the responsibility of maintaining this outfall.

Staff also recommends the applicant record a private storm drainage easement on the common open space to ensure their maintenance of drainage outfall area, subject to review and approval by the Zoning Administrator prior to recordation.

- b) The Special Exception will not be inconsistent with the objectives specified in the Comprehensive Plan.

Within the City's Comprehensive Plan, Objective HOU-1.1 encourages the "move-up" housing of single-family detached housing with higher value and more contemporary floor plans and amenities. Amenities of "move-up" housing may include decks, patios and access to common open space.

Staff finds that the applicant's request for the existing patio to remain is not inconsistent with the objective of the Comprehensive Plan for move-up housing.

- c) The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to unusual building design, lot shape or mature vegetation; or there are practical siting constraints where original placement of the dwelling on the lot prohibits reasonable improvements that meet existing requirements.

The original siting of the residential structure on the subject property is consistent with the typical lot detail approved with the rezoning case and shown on the GDP. The applicant's flagstone patio is located within the required 10-foot rear yard setback area, shown on the GDP to remain open and unoccupied. Ideally the applicant would reduce the width of the patio to three feet providing a walkway from the deck stairs to the lower level underneath the deck. This minimum patio area would provide circulation in the rear of the property. The applicant would, however, prefer the existing patio (9.3 feet wide, at the widest part, and 0.7 feet from the property line on the eastern end) to remain. The existing patio allows a hard surface for seating, a play area and a space for several people to gather and have direct access to the common open space.

Staff finds that due to the original placement of the dwelling on the subject property, the improvements of the rear patio cannot be accommodated in compliance with the typical lot detail. Staff recommends the width of the existing patio be reduced to three feet wide and 22 feet long to wrap around the stairs and deck to provide access to the lower entrance and would be the minimum relief to accommodate a connection to the basement entry.

d) The proposed structural modifications meet sound residential design objectives to:

1. Minimize loss of privacy on neighboring properties.

Staff believes the visual and noise impact of the patio will not negatively impact the privacy for the neighboring properties.

2. Maximize image of quality residential development to the street frontage.

This criterion is not applicable.

3. Maximize window area from living rooms, dining rooms, kitchens, dens and family rooms facing the street, within the context of the original building design.

This criterion is not applicable.

4. Avoid reduction of light and air to neighboring properties.

Generally, the City Code requires standard setbacks to maintain adequate light and air to adjacent properties.

Staff believes that the patio will not have a deleterious effect on the light and air to the adjoining properties.

5. Minimize development of front yard as driveways.

This criterion is not applicable.

ANALYSIS OF ADDITIONAL SECTIONS OF THE CITY CODE:

In the conventional zoning districts of R-1, 2 and 3 the following provision allows a property owner to construct certain improvements closer to their side and rear lot line.

Section 110-36 section states:

“Any unroofed and completely unenclosed patio, terrace or deck with its floor no higher than that of the ground floor entry of the principal structure may extend into any required side or rear yard, but not nearer than five feet to any side or rear lot line.”

In the P District the provision for relief from the rear yard setback standard is set forth in Code Section 110-680 (b) which as discussed earlier would have allowed the Zoning Administrator to consider reducing the setback to five feet as discussed earlier. However, given that the City Council approval did not contemplate less than a 10-foot rear yard the Zoning Administrator's determination is to grant only the minimum relief necessary for access to the basement entry.

City Code Section 110-634. Area, setback, height, coverage, density and floor area ratio.

- (4) Coverage. Maximum coverage permitted of all impervious surfaces in any P-D district shall not exceed 50 percent of the total gross acreage. Areas used for swimming pools, bathhouses, tennis courts and other outside recreational space that is improved with a hard surface, to the extent that it does not exceed five percent of the gross acreage, shall not be counted as covered area. At least 20 percent of the gross tract area shall be in open space sections of at least 10,000 square feet each.

The GDP tabulations, as found below, state that the lot coverage, at time of the rezoning and site plan approval, will be 48.57%. As stated in the previous paragraphs the maximum lot coverage allowed is up to 50%. The typical layout did not address footprint or building envelope. It is staff's view that the additional impervious surface of this patio, consisting of a total of 285 square feet, will not cause the entire development to reach the 50%. However, if there are several requests, like this in the future, the maximum allowable impervious surface area could exceed 50%. It is important to keep the total number of additional patios and impervious surfaces in mind when reviewing P District zoning case requests.

	REQUIRED		PROVIDED		
	TOD	RPD	TOD/RPD PORTION	RPD ONLY PORTION	TOTAL SITE
LAND AREA			170,881 SF	30,704 SF	201,585 SF
DWELLING UNITS			28 SFA, 5 SFD	4 DUPLEX	28 SFA, 5 SFD, 4 DUPLEX
DENSITY	N/A	N/A	N/A	N/A	7.58 DU/AC.
HEIGHT	MAX 43' HIGH WALL	MAX 3 STORY BLDG. OR 35'	MAX 43'	MAX 3 STORIES/35'	
SETBACKS:					
FRONT	MIN. 10'	MIN. 20'	SEE SHT.2	SEE SHT.2	
SIDE	NONE, 10' IF PROVIDED	NONE	SEE SHT.2	SEE SHT.2	
REAR	NONE	MIN. 20'	SEE SHT.2	SEE SHT.2	
CORNER	10' SIDEWALK	N/A	10' SIDEWALK	N/A	
OTHER	25' ABUTTING RESID. ZONE	25' AROUND PERIMETER	SEE SHT.2	SEE SHT.2	
FAR	MAX 1.2 FOR RESD. W/ GARAGE	N/A	1.2	N/A	
#D.U. IN GROUP	N/A	MAX 4	MAX 6	2	
IMPERVIOUS COVERAGE	N/A	MAX 50%	48.83%	47.14%	48.57%
OPEN SPACE	N/A	MIN. 10% CONTIGUOUS COMMON OPEN SPACE	59,673 SF 34.9%	6,546 SF 21.3%	66,219 SF 32.8%

CONCLUSIONS

Based on the review of Section 110-369(6) of the Zoning Ordinance as it pertains to application SE-14090033, staff concludes:

- 1) The size and shape of the subject property is adequate for the existing residential structure; however the patio improvement has a negative effect on the surrounding properties because there is minimal vegetated space between the patio and the common open space and an adverse drainage condition has been created;
- 2) The applicant's request is not inconsistent with the Comprehensive Plan;
- 3) The typical layout shown on the GDP precludes the applicant from locating the proposed improvements within the required rear yard setback or elsewhere on the lot; and
- 4) The proposed improvements meet sound residential design objectives.

RECOMMENDATION

In consideration of this application SE 14090033 with the City Code Section 110-369(6), staff recommends that the BZA deny the request to reduce the rear yard setback from 10 feet to 0.7 to accommodate the existing irregularly shaped flagstone patio.

However, should the BZA decide to approve the applicant's request, staff recommends the following development conditions:

1. The applicant, and any future owners, successors and assigns of the property, shall ensure the patio remains in its current configuration as shown on the plat entitled Lot 24-Royal Legacy Commons, prepared by Christopher Consultants, dated 9/2/14 and submitted with this application.
2. The applicant shall submit to the Zoning Administrator for review and approval, a private storm drainage easement on the common open space to maintain their drainage outfall.
3. The applicant shall ensure the storm drain easement is recorded among the Land Records of Fairfax County.

PREPARED BY:

Lisa Feibelman

Lisa Feibelman, AICP
Deputy Zoning Administrator

October 2, 2014
DATE

REVIEWED:

Nancy Cranmer

Nancy Cranmer, AICP
Deputy Zoning Administrator

10-2-14
DATE

REVIEWED AND APPROVED:

Michelle Coleman ZIA

Michelle D. Coleman
Zoning Administrator

10-2-14
DATE

REVIEWED AND APPROVED:

R.H.

Brooke Hardin, AICP
Director, Community Development & Planning

10/2/14
DATE

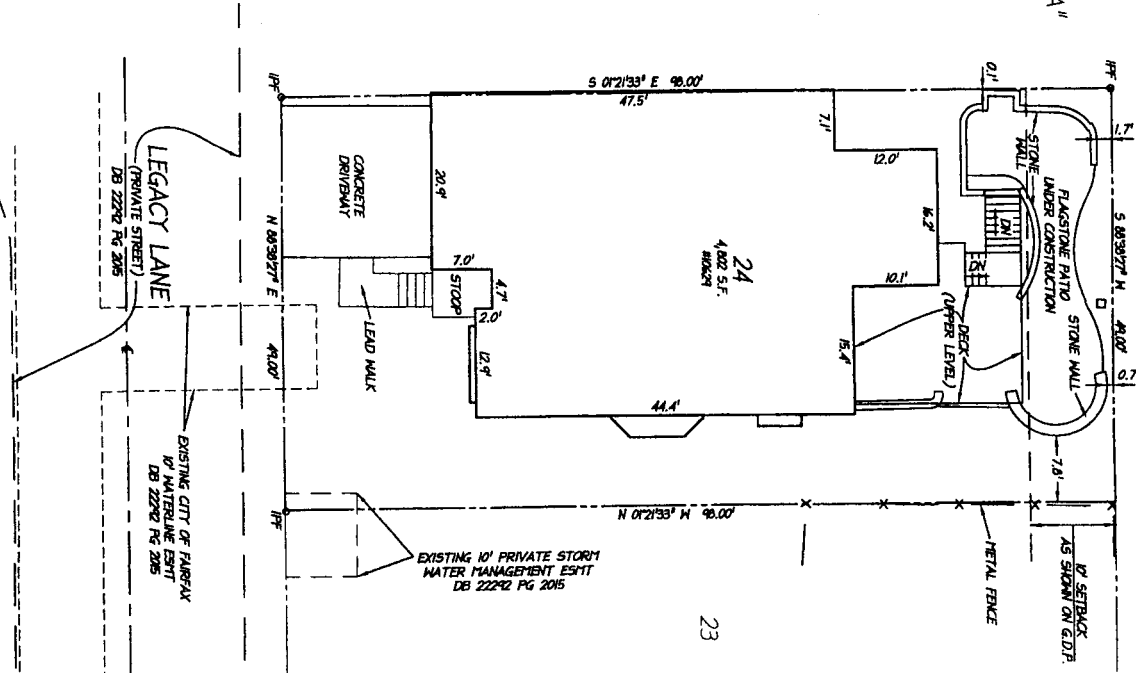
ATTACHMENTS

1. Plat
2. Applicant's Statement of Support
3. Photos submitted by applicant
4. Petition in support of application
5. Notice of Violation (NOV) and photographs taken with NOV
6. Plans and proffers attached to NOV and approved with Z-08070013
7. Royal Legacy Homeowners' Association approval letter
8. Sample Resolutions
9. Sample Motions

ATTACHMENT: 1

VCS 1983 GRID NORTH

PARCEL "A"



23



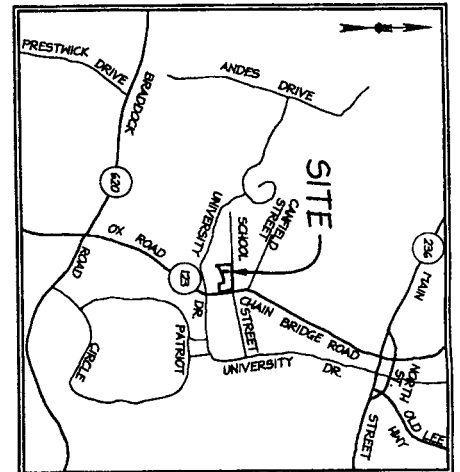
GRAPHIC SCALE

NOTES

1. THE PROPERTY SHOWN HEREON IS LOCATED ON CITY OF FAIRFAX TAX ASSESSMENT MAP AS PARCEL DB 57.3 20 024.
2. CURRENT OWNER, ALLIUM HOME AND ANNE WAGNER AS RECORDED IN DB 28341 PG 407.
3. THE LOT SHOWN HEREON IS LOCATED ON F.E.H.A. MAP (COMMUNITY PLAN) NO. 55824 ROAD DATED 06/02/05, ZONE "A" (AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).

VICINITY MAP

SCALE: 1" = 2000'



Community Development

SEP 09 2014

RECEIVED



PLAT SHOWING NEW IMPROVEMENTS

LOT 24
ROYAL LEGACY COMMONS
CITY OF FAIRFAX, VIRGINIA



christopher consultants
engineering - surveying - land planning
9417 Innovation Drive Manassas, VA 20110
703.293.9887 fax 703.393.9076

STEPHEN K. FOX
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
10511 JUDICIAL DRIVE
SUITE 112
FAIRFAX, VIRGINIA 22030

ATTACHMENT: 2

(703) 273-7220
skfox@stephenkfoxpc.com

FAX (703) 273-7225

September 8, 2014

Michelle Drew Coleman
Zoning Administrator
City of Fairfax
10455 Armstrong Street, 207A
Fairfax, Virginia 22030

RECEIVED

SEP 09 2014

Community Dev & Planning

Re: Statement of Support; Application of Anne Wagner and Allyn Howe for
Special Exception Pursuant to Code Sections 110-369 and 110-680; 10629
Legacy Lane (Tax Map 57-3 20 024) To Permit Flagstone Patio To Be
Constructed Within Rear Yard Set Back/Request to Dismiss Notice of Violation

Dear Ms. Coleman:

This application for Special Exception in connection with the above property is submitted on behalf of the owners of 10629 Legacy Lane to permit the flagstone pation to be constructed within the rear yard set back and to dismiss the Notice of Violation issued in connection with the construction thereof.

BACKGROUND and JUSTIFICATION FOR REQUEST:

The subject property is a new residence constructed in the "Royal Legacy Commons" subdivision in the School Street, West area of the City. The property is part of a subdivision zoned in the Residential Planned District (RPD) of the City. As such the RPD plan was proffered, depicting the allowable elements to be sited on the property.

Applicants, owners of the property, were unaware of the zoning distinctions presented by this proffered plan, and proceeding in good faith presented a flagstone patio design to the Home Owners' Association (HOA) for approval. The design presented was approved by the HOA; there was no mention of the nature of the proffered plan. Since the patio did not require a Building Permit, the owners proceeded with construction of the patio, which when approximately 85% completed (all that remained was placement of the flagstone surface) was halted when the City Zoning Inspector noted that it was in violation of the zoning district.

After it was determined to constitute an act at variance with the Ordinance, a meeting was held with the Planning Director and the Zoning Administrator. The owners

desired to proceed administratively under Section 110-680 (b), but were encouraged to file for a Special Exception instead.

Summarizing the criteria for consideration of Special Exceptions to Yard Requirements set forth in Sections 110-369(6)(a-d), it is submitted:

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1. The site is adequate in size and shape for the proposed use. The patio is an enhancement to the rear yard both in terms of aesthetics and utility of the area. It will not affect adjacent properties negatively;
2. The Special Exception will not be inconsistent with Comprehensive Plan objectives. The rear yard and patio overlook a substantial area of common open space in the community, and will not infringe upon any other residential lot to the rear.
3. It is believed that the owners' inability to construct a rear yard patio is unreasonable in this instance, and but for the nature of the proffered plan in the RPD district, the same would have been approvable if included on the proffered plan. The size and shape of the lot present practical siting constraints as any outdoor amenity must be placed in the rear yard as there is not useable side yard or front yard.
4. The proposed structural modifications meet sound residential design objectives to
 - a. Minimize the loss of privacy on neighboring properties; the neighbors on each side support the application and there are no neighbors to the rear of the property;
 - b. Maximize image of quality residential development to the street frontage. There is no impact to the street frontage; the patio is not visible from the front yard;
 - c. Maximize views from window areas. There is no impact upon window areas of the building;
 - d. Avoid any reduction of light and air to neighbors. The patio has no effect on light and air with respect to neighboring properties;
 - e. Minimize development of front yard areas as driveways. The patio has no impact on front yard areas.

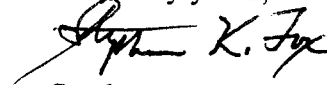
SUMMARY/CONCLUSION:

On the basis of the foregoing, the applicants request approval of a Special Exception to permit the flagstone patio remain in place, constructed in the area as shown on the plat prepared by Christopher Consultants dated September 3, 2014. Further, by way of appeal, the applicants request dismissal of the Notice of Violation issued on August 27, 2014. The patio, shown in photographs, included herewith is an aesthetically pleasing structure which enhances the value of the property, and adds to the

owners ability to enjoy the rear yard. It is in no manner intrusive. Proceeding in good faith, the owners have expended substantial funds for its construction.

We would appreciate Zoning Staff's review of this Special Exception application, and your forwarding it to the Board of Zoning Appeals for a public hearing on the request.

Very truly yours,



Stephen K. Fox

cc : Anne Wagner
Allyn Howe

ENCLOSURES:

Application, with Affidavit
Filing fee: \$500.00
Photographs

RECEIVED

SEP 09 2014

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RECEIVED

SEP 09 2014

Community Dev & Planning





RECEIVED

SEP 09 2014

Community Dev & Planning





RECEIVED

SEP 09 2014

Community Dev & Planning



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FAIRFAX, VIRGINIA 22030

(703) 273-7220
skfox@stephenkfoxpc.com

FAX (703) 273-7225

September 15, 2014

Michelle Drew Coleman
Zoning Administrator
City of Fairfax
10455 Armstrong Street, 207A
Fairfax, Virginia 22030

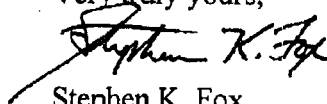
Re: **Petition in Support**; Application of Anne Wagner and Allyn Howe for
Special Exception Pursuant to Code Sections 110-369 and 110-680; 10629
Legacy Lane (Tax Map 57-3 20 024) To Permit Flagstone Patio To Be
Constructed Within Rear Yard Set Back/Request to Dismiss Notice of Violation

Dear Ms. Coleman:

I enclose herewith an original (plat attached) and copy of a Petition In Support of the above-referenced application signed by an overwhelming majority of the neighbors of the Applicants. Please include this in the information packet to the Board of Zoning Appeals for their consideration along with the other materials submitted.

Thank you for your continued guidance and assistance in this matter.

Very truly yours,


Stephen K. Fox

cc : Anne Wagner
Allyn Howe

The undersigned neighbors of Allynn Howe and Anne Wagner urge the approval of the Special Exception to allow the backyard patio to remain in place as shown on the attached plat for 10629 Legacy Lane (Lot 24)

NAME	ADDRESS	PHONE
Staki		703-820-2006
Terry & Mike Larkin	10631 Legacy Ln. Fx, VA 22030	901-763-3529 -
Meera & Benga Vasu	10633 Legacy Lane, Fairfax 22030	Fairfax, VA 22030
Leonard & Marjorie Hall	10619 Legacy Lane	703-769-2522
10615 Legacy Ln	Fairfax VA 22030	703-526-4737
Walter J. Rourke	10613 Legacy Lane Fairfax VA 22030	703-526-4737
Paul	10613 Legacy Lane Fairfax VA 22030	
Kenny Cull	10611 Royal Meadows Fairfax, 22030	703-479-7274
Michael Savera	10605 ROYAL MEWS FAIRFAX VA 22030	
Claudia Savera	10605 Royal Mews, Fairfax VA 22030	703-201-9331
David Amy	10632 Legacy Lane Fairfax, VA. 22030	
June Balch	10621 Legacy Lane, Fairfax VA 22030	
Sherril Wilkins	4407 Royal Commons Ct. Fairfax, VA 22030	
Sharon Kimi	4403 Royal Commons Ct. FFX VA 22030	
Angelika Kirkland	10623 Legacy Lane, Fairfax, VA	22030



CITY OF FAIRFAX
DEPARTMENT OF COMMUNITY
DEVELOPMENT & PLANNING
Zoning Enforcement Division
10455 Armstrong Street
Fairfax, Virginia 22030
703 385-7820

Violation # CE 2 14080039

NOTICE OF VIOLATION AND PENALTY
YOU ARE CHARGED WITH VIOLATING THE
CITY OF FAIRFAX, VIRGINIA CITY CODE

Date of Violation 7-17-14 Day of Week Thur. Time AM

Location of Violation: 10629 Royal Legacy
Fairfax, VA 22030

Ordinance Section: 110-101

Description of Violation: Failure to comply w/
the approved plan

Penalty: \$ 500

- ☒ Notice of Violation photos and prefiles attached
☐ 1st Penalty ☐ 2nd Penalty
☐ 3rd/More Penalty

*** IF THE VIOLATION IS NOT CORRECTED BY**
9-29-14 AN ADDITIONAL MONETARY
PENALTY WILL BE ASSESSED. *

NOTICE SERVED ON: _____ (DATE)

Name: Last _____ First _____ Middle _____

I hereby acknowledge receipt of this Notice of Violation.
Signature is not an admission of guilt.

Signature _____ Date _____

Copies: Violator's - White City Attorney - Yellow

INDIVIDUAL/BUSINESS RESPONSIBLE
FOR VIOLATION:

- ☐ Property/Business Owner
☐ Property Occupant

Royal Legacy HOA #500
11351 Ransom Hills Road

Fairfax VA 22030

cc: Anne Wagner & Allyn Howe
10629 Royal Legacy Lane
Fairfax, VA 22030

CERTIFICATION OF ISSUING AGENT

The undersigned states that he/she is an employee of the City of Fairfax Department of Community Development and Planning, that he/she personally observed or investigated the commission of the violation noted above and/or the violation was based upon a signed affidavit or other reliable evidence, and that on the date of notice, a copy of this notice was:

- ☐ Hand delivered to: _____
☒ Mailed/posted a true copy of this notice to the last known home or business address of the respondent or the respondent's agent.

Royal Legacy HOA #500
11351 Ransom Hills Road
Fairfax, VA 22030
City/State/Zip

☐ Posted true copy of this notice at the site of the infraction.
Lisa Feibelman Aug 27, 14
Inspector's signature Date

Print Name: Lisa Feibelman
Phone Number: 703-385-7820

MUST RETURN

SIGNED FORM WITH
PAYMENT 9-29-14

Community Development & Planning - Blue Treasurer's - Pink

WARNING

YOU ARE REQUIRED TO RESPOND TO THIS NOTICE WITHIN 15 DAYS IN ONE OF THE FOLLOWING WAYS. HOWEVER, ADDITIONAL NOTICES OF VIOLATION MAY BE ISSUED WITHIN THAT TIME PERIOD IF WARRANTED. FAILURE TO RESPOND TO THIS NOTICE WILL RESULT IN THE FILING OF A CIVIL LAW-SUIT TO ENFORCE THE PENALTY IMPOSED HEREIN.

1. TO PAY PENALTY & WAIVE YOUR RIGHT TO HEARING

- Check the "Admit Violation" or "No Contest" box below;
- Make personal check, cashier's check, certified check or money order payable to City of Fairfax. Do not send cash through the mail; print violation notice number on the check or money order;
- Payment may be made by mail, or in person, at the Treasurer's Office, City Hall, 10455 Armstrong St., Room 234, Fairfax, VA 22030 between the hours of 8:30 a.m.—5:00 p.m., Monday—Friday, phone (703) 385-7902; —OR—

2. TO REQUEST A COURT HEARING

- Check the "Contest in Court" box below and:
- (a) Mail this completed notice to the Department of Community Development & Planning, 10455 Armstrong Street, Fairfax, VA 22030; —OR—
- (a) Appear in person or by authorized representative at the above address between the hours of 8:30 a.m.—5:00 p.m., Monday—Friday phone (703) 385-7820.

If you wish to contest this violation, a date will be set for trial in General District Court of Fairfax, Virginia. Failure to appear in court on the date set for trial, unless prior approval has been granted by a judge of that court, will result in the entry of default judgment against you. —OR—

3. TO CONTEST THE INTERPRETATION OF ORDINANCE

You have the right to appeal the interpretation of the zoning ordinance upon which this violation is based to the Board of Zoning Appeals within 30 days in accordance with 15.2-2311 of the Code of Virginia. To file such an appeal, you must complete the appropriate written request and pay the appropriate fee for such appeal with the Department of Community Development & Planning. The interpretation shall be final if not appealed within 30 days.

YOU MUST COMPLETE & SIGN THIS CERTIFICATION

- Choose One: ☐ Admit Violation ☐ No contest
☐ Contest in Court ☐ Appeal to BZA

Name (print) _____
Street Address _____
City _____ State _____ Zip _____
Telephone Number _____

I hereby certify under penalty of law that I have answered as indicated above, and corrected or made substantial effort to correct the violation that I have admitted or for which I have pleaded no contest.
Signature _____ Date _____

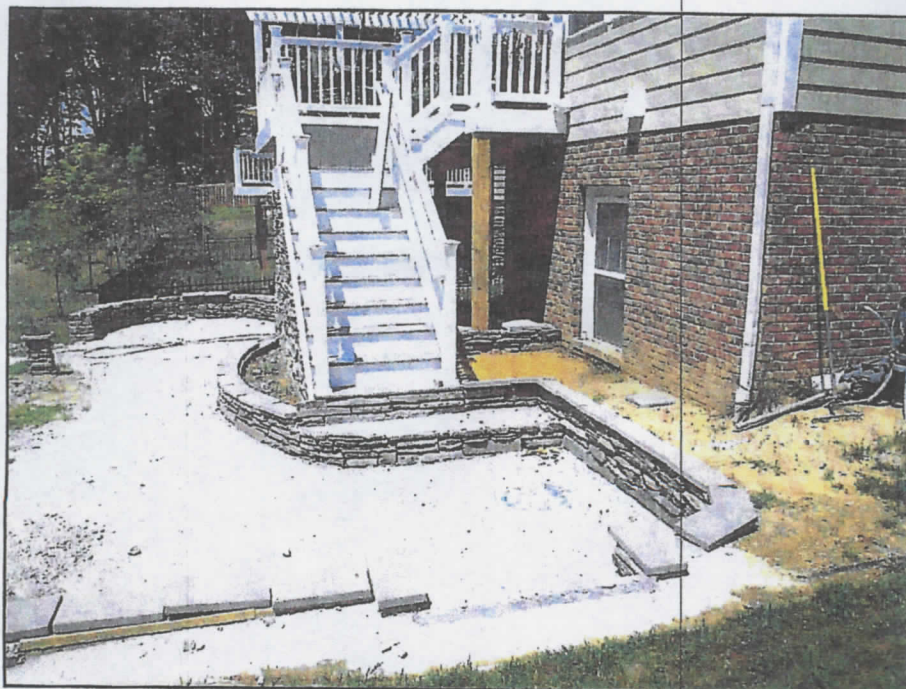
ATTACHMENT: 5

7/17/2014





7/17/2014



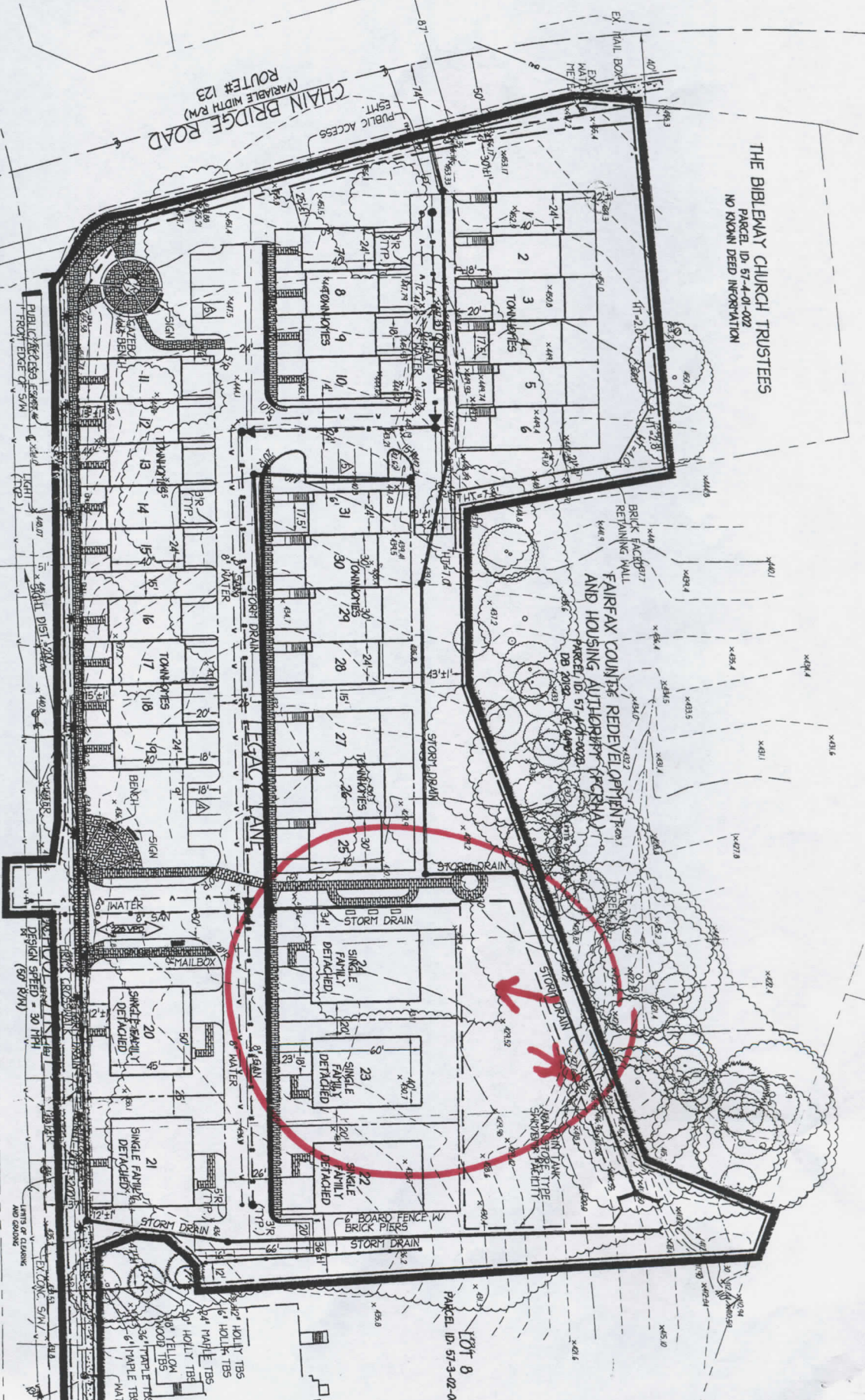
7/17/2014



THE BIBLEMAY CHURCH TRUSTEES
 PARCEL ID: 57-4-01-002
 NO KNOWN DEED INFORMATION

FAIRFAX COUNTY REDEVELOPMENT
 AND HOUSING AUTHORITY (FCRA)
 PARCEL ID: 57-4-01-002
 DB 2002 FC 0000

CHAIN BRIDGE ROAD
 (VARIABLE WIDTH RW)
 ROUTE# 123



J. M. RAY, SURVEYOR
 LICENSE NO. 10,000
 DATE 04/11/10

Royal Legacy Commons

Development Plan

Preliminary Site Plan

Architect's Consultants

Stamped
 Approved
 5/11/2010

450
 OBJECT
 HEIGHT
 = 3.5'

SIGHT DISTANCE = 200'

PRE-DEVELOPMENT SITE CONDITION

Royal
Legacy
Proffers

ORDINANCE NO. 2010-11

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF FAIRFAX, VIRGINIA TO RECLASSIFY FROM R-1 AND R-2, RESIDENTIAL, TO RPD, RESIDENTIAL PLANNED DISTRICT (WITH PROFFERS), "THE PROPERTY" IDENTIFIED AS "ROYAL LEGACY COMMONS" FURTHER DESCRIBED AS CITY OF FAIRFAX TAX MAP PARCELS 57-3-02: 064, 067, 068, 068A AND 069 AND 57-4-01-002A AND TO FURTHER CLASSIFY TAX MAP PARCELS TO OLD TOWN FAIRFAX TRANSITION OVERLAY DISTRICT

WHEREAS, The Johnson A. Edosomwan LLC, by Robert H. Lawrence, attorney/agent, submitted applications No. Z-08070013, V-09060003 and SE-10030038 requesting a change in the zoning classification from R-1 and R-2, Residential to RPD(p), Residential Planned Development (with proffers) and Old Town Fairfax Transition Overlay District, with special exceptions and variances, for the tax map parcels identified above, and more specifically described as follows:

TRACT 1 (TAX MAP PARCELS 57-3-02: 067, 068, 068A AND 069 AND 57-4-01-002A)

Beginning at a point on the westerly line of Chain Bridge Road, Route #123, a variable width public right-of-way, said point also being the northeast corner of The Bibleway Church property;

Thence, departing the westerly line of Chain Bridge Road and running with the northerly line of The Bibleway Church property, S84°38'46"W, a distance of 204.27 feet to the northwest corner of The Bibleway Church property, said point also being on the easterly line of William F. and Lillian A. Jones and further being on the dividing line between Fairfax County and the City of Fairfax;

Thence, departing the northerly line of The Bibleway Church property and running with a portion of the easterly line, the northerly lines and the westerly line of Jones, also coinciding with the dividing line between County and City, the following four (4) courses and distances:

1. N10°42'14"W, a distance of 114.31 feet;
2. S88°34'36"W, a distance of 100.97 feet;
3. S69°34'06"W, a distance of 288.53 feet;
4. S22°21'45"W, a distance of 73.54 feet to the northwest corner of Jones, said point also being on the northerly line of Fairfax County Redevelopment and Housing Authority (FCRHA) as well as continuing to be the dividing line between County and City;

Thence, departing the westerly line of Jones and running with a portion of said northerly line of FCRHA, N72°02'01"W, a distance of 21.00 feet to the southeast corner of Lot 8, J. W. Rust Subdivision;

Thence, departing the northerly line of FCRHA and running with the easterly line of Lot 8, J. W. Rust Subdivision, N03°58'42"W, a distance of 364.48 feet to the northeast corner of Lot 8, J. W. Rust Subdivision, said point also being on the southerly line of School Street, a fifty (50) foot wide public right-of-way;

Thence, departing the easterly line of Lot 8, J. W. Rust Subdivision and running with said southerly line of School Street, the following four (4) courses and distances:

1. N88°38'25"E, a distance of 533.21 feet;
2. S01°16'40"E, a distance of 0.98 feet;
3. N88°43'20"E, a distance of 26.00 feet;
4. S57°47'53"E, a distance of 52.73 feet, to a point on the aforementioned westerly line of Chain Bridge Road;

Thence, departing the southerly line of School Street and running with said westerly line of Chain Bridge Road, the following four (4) courses and distances:

1. S15°07'42"E, a distance of 36.00 feet;
2. N74°52'18"E, a distance of 1.00 feet;
3. S15°07'42"E, a distance of 148.47 feet;
4. S09°26'34"E, a distance of 99.79 feet, to the point of beginning,

containing 170,881 Square Feet or 3.92289 Acres of Land, More or Less.

TRACT 2 (TAX MAP PARCEL 57-3-02-064)

Commencing at the aforementioned northeast corner of Lot 8, J. W. Rust Subdivision, said point also being on the southerly line of School Street, a fifty (50) foot wide public right-of-way;

Thence, running with southerly line of School Street, S88°38'25"W, a distance of 190 feet, to the northwest corner of Lot 9, J. W. Rust Subdivision, the second point of beginning;

Thence, departing the southerly line of School Street and running with the westerly line of Lot 9, J. W. Rust Subdivision, S03°45'07"E, a distance of 296.22 feet, to the southwest corner of Lot 9, J. W. Rust Subdivision, said point also being on the northerly line of Fairfax County Redevelopment and Housing Authority (FCRHA) and further being on the dividing line between Fairfax County and the City of Fairfax;

Thence, departing the westerly line of Lot 9, J. W. Rust Subdivision and running with the northerly line of FCRHA, N72°02'01"W, a distance of 118.37 feet, to the southeast corner of Chancery Park, Section 3, also falling on the dividing line between County and City;

Thence, departing the northerly line of FCRHA and the dividing line between County and City and running with the easterly line of Chancery Park, Section 3, N04°14'55"W, a distance of 257.12 feet, to the northeast corner of Chancery Park, Section 3, said point also being on the aforementioned southerly line of School Street;

Thence, departing the easterly line of Chancery Park, Section 3 and running with said southerly line of School Street, N88°38'25"E, a distance of 112.29 feet, to the second point of beginning,
containing 30,704 Square Feet or 0.70487 Acres of Land, More or Less.

Total combined area of Tracts 1 and 2 is 201,585 Square Feet or 4.62775 Acres of Land, More or Less; and

WHEREAS, the City Council has carefully considered the application, the recommendation of the Planning Commission and staff, and the testimony received at public hearing; and

WHEREAS, the City Council has determined that the proposed rezoning is proper and in accordance with the Comprehensive Plan as well as with the pertinent provisions set forth in the Code of Virginia and the Code of the City of Fairfax, Virginia;

NOW, THEREFORE BE IT ORDAINED, that the above described Tracts 1 and 2 be rezoned from R-1 and R-2, Residential to RPD(p), Residential Planned Development (with proffers).

BE IT FURTHER ORDAINED, that the above described Tract 1 be rezoned to the Old Town Fairfax Transition Overlay District.

BE IT FURTHER ORDAINED, that the above described Tracts 1 and 2 be subject to the following reasonable conditions authorized by City Code Section 110-7, which are proffered by the property owners:

1. S15°07'42"E, a distance of 36.00 feet;
2. N74°52'18"E, a distance of 1.00 feet;
3. S15°07'42"E, a distance of 148.47 feet;
4. S09°26'34"E, a distance of 99.79 feet, to the point of beginning,

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NOW, THEREFORE BE IT ORDAINED, that the above described Tracts 1 and 2 be rezoned from R-1 and R-2, Residential to RPD(p), Residential Planned Development (with proffers).


BE IT FURTHER ORDAINED, that the above described Tract 1 be rezoned to the Old Town Fairfax Transition Overlay District.

BE IT FURTHER ORDAINED, that the above described Tracts 1 and 2 be subject to the following reasonable conditions authorized by City Code Section 110-7, which are proffered by the property owners:



1. GENERAL DEVELOPMENT PLAN

The general character of the development of the Property shall be in substantial conformance with the General Development Plan/Preliminary Site Plan (GDP/PSP), entitled "Royal Legacy Commons" dated July 27, 2009, as revised through April 9, 2010, prepared by christopher consultants.



2. LANDSCAPING

a. The Applicant shall, at its sole expense, provide landscaping in substantial accordance with Sheet 7 of 9 of the GDP/PSP, subject to Board of Architectural Review ("BAR") approval. Large deciduous trees shall have a minimum caliper of 3½ inches, medium deciduous trees shall have a minimum height of 8 to 10 feet and evergreen trees shall have a minimum height of 7 to 8 feet at time of planting.

b. The Applicant reserves the right to install an entry features on the Property in proximity to its access points on School Street. Said features may include decorative walls and/or fencing in addition to landscaping.

3. TREE PRESERVATION.

a. The Applicant shall take necessary steps and actions to ensure the long-term survival, and continuing structural integrity and health of trees designated on sheets 2 and 7 of 9 of the GDP/PSP to be preserved. The landscape plan submitted as part of the subdivision/site plan shall conform to the GDP/PSP. Minor modifications may be permitted to the extent that these do not change the designation of individual trees to be preserved or result in significant physical impacts to the areas outside the limits of clearing and grading shown on the GDP/PSP.

b. Prior to subdivision/site plan submission the Applicant shall retain the services of a certified arborist to review the impact of proposed site grading on the trees to be preserved and on nearby off-site trees that may be impacted by site development. The certified arborist shall prepare a Tree Management Plan specifying preservation practices to be used to maximize chances of tree survival, such as crown pruning, root pruning, mulching, fertilization and others as necessary and identifying any trees that in the arborist's professional judgment would become hazardous in the new setting and should be removed. The Tree Management Plan shall be incorporated into the subdivision/site plan for review and approval.

c. All trees designated to be preserved shall be protected by tree protection fencing. Tree protection fencing shall consist of 4-foot high, 14 gauge welded wire attached to 6-foot steel posts driven 18 inches into the ground and shall be shown on the subdivision/site plan. All tree protection fencing shall be installed prior to any site clearing and grading activities. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist or landscape architect and accomplished in a manner that does not harm existing vegetation.

d. At the time of bond release for each section, the trees will be inspected by the City and the certified arborist retained by the Applicant. Should any existing individual tree shown for preservation not survive due to the impact of construction, the Applicant shall replace such trees as follows:

- For a tree up to five (5) inches in caliper failing to survive, one (1) tree with a caliper of not less than 3½ inches shall be provided;
- For a tree between five (5) and sixteen (16) inches in caliper failing to survive, two (2) trees with a caliper of not less than three and a half (3½) inches shall be provided;

- For a tree with a caliper of sixteen (16) inches or greater failing to survive, three (3) trees with a caliper of not less than four and a half (4½) inches shall be provided;
- In general, the replacement trees shall be the same species of the failing tree except that the Applicant may substitute trees of different species with the advice and consent of the Zoning Administrator.

4. HOMEOWNERS' ASSOCIATION

a. The Applicant shall form a Homeowners' Association (HOA) for the Property. The HOA shall be responsible for maintenance of the private streets, the parking area and adjacent sidewalk, stormwater management facilities and water quality facilities, retaining walls and adjacent easement, and the open space owned by the HOA. Further, the HOA shall be responsible for the enforcement of restrictions on the Property. The Applicant shall notify all prospective purchasers in sales literature and purchasers in writing at the time of settlement of these maintenance responsibilities and restrictions. Maintenance responsibilities shall include, but not be limited to, snow removal and travel aisle maintenance.

b. The Applicant shall disclose to the prospective purchasers of the units that Chancery Park Owners Association may desire to expand its Association to include the open space of the Royal Legacy Commons and to allow the Royal Legacy Commons owners to join its Association rather than operate its own Association. In the event Chancery Park Owners Association makes such proposals to Royal legacy Commons, the Declarant agrees to recommend to the Association that such proposal be fairly considered by Royal Legacy Commons Association.

5. PRIVATE STREETS

At the time of site plan approval, the Applicant shall grant a public ingress-egress easement to the City of Fairfax over the private streets to permit access for trash collection, recycling and emergency vehicles. All private streets shall be constructed (subgrade and pavement thickness) to City of Fairfax standards as specified in The Thickness Design of Asphalt Pavements for Highways and Streets, prepared by The Asphalt Institute dated February, 1991, or to the requirements of Section 7-502 of the Fairfax County Public Facilities Manual, as determined by the Director of the City of Fairfax Department of Public Works.

6. RESTRICTIVE COVENANTS

Restrictive covenants for the Property shall include, but not be limited to, the following:

a. No person will be allowed to construct any exterior structural improvements (including decks and fences) without the review and approval by the HOA, which shall be guided by architectural guidelines established by the Applicant, the homeowners' association documents, and approval of the City's Zoning Administrator and receipt of necessary building permits.

b. Conversion of garages that will preclude the parking of vehicles within the garage will be prohibited in the development. (This shall not preclude the use of garages as sales offices in the model homes during marketing of the development, with the understanding the sales offices will be converted back to garages upon sale of the models.)

c. The maintenance of the private streets, the stormwater detention/water quality facilities, and walkways, retaining walls and other landscaping features located in common open space will be the responsibility of the HOA in perpetuity, and said maintenance costs shall be shared as among all thirty-five (35) lots. The HOA shall obtain adequate liability insurance to

protect against legal claims that may arise from the maintenance of these facilities. It is understood that no request shall be made to have the private streets taken into the City of Fairfax street system.

d. Outside storage or parking of recreational vehicles on the Property shall be prohibited both on individual lots and elsewhere on the Property.

7. ARCHITECTURAL DESIGN

The townhouses to be constructed on the Property shall have façades of brick, stone, or a combination thereof, except for bay windows, dormer windows and other architectural appurtenances, ornamentation and detailing in other materials.

The duplex and single-family detached houses shall have façades comprised of brick, stone, composition siding, or any combination of these materials. Units #20 and 21 shall have all façades of brick, stone or a combination thereof. Unit #24 shall have the front and easterly side façade of brick, stone or combination thereof. Units #22 and 23 shall have the front façade of brick, stone or combination thereof. Unit #35 shall have the front and northerly side façade of brick, stone or combination thereof. The required brick or stone façades shall be deemed to allow architectural appurtenances such as bay windows, dormer windows and ornamentation and detailing in other materials.

House designs for townhouses and single-family detached units in the Old Town Fairfax Transition Overlay District shall adhere to the maximum allowed wall height of 43 feet, including the side wall of the house up to the top of the gable roof.

The architectural design shall generally conform with the character and quality of the illustrative photographs depicted on sheet 9 of 9 of the GDP/PSP and the architectural renderings prepared by AG Design Studio. The Applicant reserves the right to modify final architectural design subject to approval by the BAR.

8. GATEWAY PLAZA FEATURE

a. The Applicant shall, at its sole expense, construct a gateway plaza feature at the intersection of Chain Bridge Road and School Street, in general conformance with the plaza depicted on Sheet 7 of 9 of the GDP/PSP and shown in the architectural renderings prepared by AG Design Studios, with the sign being shifted to the location shown on the GDP/PSP. The main paving material of the plaza shall be brick and shall contain vertical elements.

b. The existing acorn lighting along Chain Bridge Road shall be maintained. The Applicant shall construct the first light fixture on School Street within or immediately adjacent to the plaza area as an acorn fixture as well.

c. The Applicant shall be responsible for the engineering and cost of relocation, if necessary, of the existing signal pole, traffic sign, and retaining wall located at this corner.

9. SIDEWALKS AND CROSSWALKS

a. The existing sidewalk along Chain Bridge Road shall remain as constructed. The sidewalk shall not be blocked for construction without prior permission of the Director of Public Works (DPW) and installation of proper signage directing pedestrians to alternate routes. If the existing sidewalk is damaged due to construction activities on the Property, it shall be replaced/repaired. If, in the opinion of the Director of Public Works, the damage creates a hazard for pedestrians, the damage shall be repaired immediately. Otherwise needed repair or replacement shall occur prior to release of the site plan bond on the Property. A joint inspection with DPW of the condition of the sidewalk shall be made prior to the start of construction.

b. The Applicant shall construct a five (5) foot wide brick sidewalk along School Street from its intersection with Chain Bridge Road extending to the first private accessway and dedicate an additional foot of right-of-way to accommodate it.

c. The Applicant shall construct brick crosswalks across the private accessways at their intersection with School Street and along the internal private accessway, as shown on the GDP/PSP.

10. PHASE I and PHASE II ENVIRONMENTAL ASSESSMENT

Concurrent with or prior to first submission of the subdivision/site plan, the applicant shall submit a Phase I and Phase II environmental assessment to the Department of Community Development and Planning for the trash and hauling operation formerly operating within the area of 10607 and 10609 School Street. If the Applicant or the City believes it necessary by the results of the Phase I and Phase II Environmental Studies, it shall conduct a Phase III Environmental Study and provide remediation.

11. LIGHTING

With the exception of the lighting discussed for the gateway feature in Proffer #9, the Applicant shall install electric lights with fixtures resembling the copper gaslight fixtures specified in the Community Appearance Plan for Old Town.

12. SPRINKLED STRUCTURES, MAIL BOXES AND TRASH

Buildings on Lots 32-35 will provide sprinkler systems in lieu of providing fire truck access. Lots 32-35 will provide their mail boxes and trash shall be taken to an area along School Street in lieu of providing a truck turnaround.

13. CONSTRUCTION MANAGEMENT PLAN

Subsequent to rezoning approval but prior to site plan approval, the Applicant agrees to submit a management plan for approval by the City Manager or his designee for construction which will include the following information:

- A. Hours of operation;
- B. Truck routes to and from entrances;
- C. Location of parking areas for construction employees;
- D. Truck staging and cleaning areas;
- E. Storage areas;
- F. Fencing details;
- G. Trailer and sanitary facility locations;
- H. Traffic control measures; and
- I. Maintenance of entrances.

The Applicant shall take every reasonable step to discourage traffic through nearby single-family neighborhood communities. The Applicant shall post signs banning construction traffic from exiting the site onto westbound School Street and shall route all construction traffic to the site via Chain Bridge Road.

The Applicant shall ban its employees and employees of contractors and subcontractors working on the site from parking on the north side of School Street and on other nearby City streets. The Applicant shall install signs to that effect if requested by the City's representative.

The Applicant shall provide cash, bond or letter of credit in the amount of \$20,000 to provide for any damage to the road system fronting the Property due to construction traffic. A joint inspection with the DPW of the condition of such roads shall be made prior to the start of construction. At the conclusion of construction, a joint inspection with the DPW of the condition of such roads, and if there has been no damage due to construction traffic, said bond or letter of credit shall be released to the Applicant forthwith.

The Applicant shall provide a plan for phased construction of the development one month prior to beginning construction to include the timetable for public and site improvements and plans for any ancillary facilities such as sales or construction trailers.

The Applicant shall identify a person who shall serve as a liaison to the community throughout the duration of construction. The name and telephone number of this individual shall be provided in writing to residents and business owners abutting or across School Street from this site, to Chancery Park Homeowners Association, and to the Zoning Administrator.

Construction activity shall be limited from 7:00 A.M. to 6:00 P.M. weekdays and 8:30 A.M. to 5:00 P.M., Saturdays. No construction activity shall take place on Sundays.

14. NOISE ATTENUATION

a. Prior to final site plan approval, the Applicant shall retain an acoustical consultant to prepare a noise assessment based on final site grades and future traffic volumes on Chain Bridge Road, Route 123, for review and approval by the Zoning Administrator.

b. In order to reduce interior noise to a level of approximately DNL 45 dBA, units within a highway noise impact zone of DNL 65-70 dBA, as ultimately determined by the study in Paragraph (a) above, shall be constructed with the following acoustical treatment measures:

i. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

ii. Doors and windows shall have a laboratory STC rating of at least 28 unless windows constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the windows shall have a STC rating of at least 39. However, the Applicant may elect to have a refined acoustical analysis performed to determine minimum STC ratings for exterior walls, windows, and doors; and the STC rating specifications may be reduced based on this analysis, as determined appropriate by DPW.

iii. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

c. In order to reduce interior noise to a level of approximately DNL 45 dBA, units within a highway noise impact zone of DNL 70-75 dBA, as determined by the study in Paragraph (a) above, shall be constructed with the following acoustical treatment measures:

i. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

ii. Doors and windows shall have a laboratory STC rating of at least 37 unless windows constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the windows should have a STC rating of at least 45. However, the Applicant may elect to have a refined acoustical analysis

performed to determine minimum STC ratings for exterior walls, windows, and doors; and the STC rating specifications may be reduced based on this analysis, as determined appropriate by DPW.

iii. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

d. Nothing herein shall be construed to restrict or otherwise limit the use of upper-level balconies or decks on residential units.

15. GREEN BUILDING DESIGN

The Applicant shall provide Energy Star appliances in all units.

16. UNIVERSAL DESIGN

Eight (8) of the attached dwelling units and two (2) of the detached dwelling units shall have universal design elements incorporated into the design of these units. The universal design elements shall include the following:

a. At least one zero-step entrance to enter the home. This entrance should be accessible from the street or driveway, and may be at the front, back or side of the house.

b. Interior doors along the accessible route on the ground floor shall be a minimum of 32 inches wide, with easy-open hardware.

c. Minimum 36-inch wide level route through the ground floor, except at doorways.

d. Ground floor bathroom walls reinforced to provide for the possibility of each installation of grab bars at toilets, tubs and showers at a later time.

e. Light switches, electrical outlets, thermostats and other controls installed at accessible heights.

17. UNDERGROUND UTILITIES

The Applicant shall place all utilities, including existing overhead utilities underground along the frontage of the property on School Street and frontage on Chain Bridge Road.

18. INGRESS/EGRESS EASEMENT

The Applicant shall record a public ingress/egress easement along the frontage of the Property along Chain Bridge Road 50 feet from centerline for future pedestrian, bicycling or public transportation facilities as approved by the Director of the City's Department of Public Works.

19. ARCHITECTURAL REVIEW

The Applicant shall submit its Architectural Guidelines to the City's Board of Architectural Review prior to final site plan approval.

20. FUTURE AMENDMENTS

Individual sections of the Property may be subject to consideration by the Planning Commission and City Council of an amendment to this application (including GDP/PSP and proffers) without joinder or consent of the owners/residents of other sections GDP/PSP, if such amendment does not significantly affect the other sections, as determined by the Director of Community Development and Planning. Previously approved proffers applicable to the section(s) which are not subject to such an amendment shall otherwise remain in full force and effect.

21. SUCCESSORS AND ASSIGNS

The Applicant, for itself, its successors and assigns, agree that these proffers shall bind the future development of the Property, unless modified, waived or rescinded in the future by the City Council, in accordance with applicable City of Fairfax and Commonwealth of Virginia statutory procedures.

BE IT FURTHER ORDAINED, that the above conditions, application package, covenants, and general development plan/preliminary site plan revised through April 9, 2010 be approved, and that waivers be granted from City Code § 110-671(2), 110-673(2), 110-1046(3), 86-7(1) and 86-7(7).

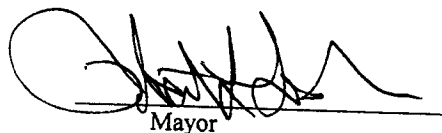
The Zoning Administrator of the City is hereby directed to modify the Zoning Map to show the changes in the zoning of these premises, including the existence of the proffered conditions, and the Clerk of the Council is directed to transmit duly certified copies of this ordinance to the applicant, Zoning Administrator, and to the Planning Commission of this City as soon as possible.

This ordinance shall be effective as provided by law.

Planning Commission hearing: April 26, 2010

City Council hearing: May 11, 2010

Adopted: May 11, 2010


Mayor

6/8/10
Date

ATTEST:


City Clerk

The motion to adopt the ordinance was approved as follows:

	Vote
Councilmember Cross	Aye
Councilman Drummond	Nay
Councilman Greenfield	Aye
Councilman Meyer	Nay
Councilman Rasmussen	Aye
Councilman Stombres	Aye

Unofficial Property Record Card - Fairfax, VA

General Property Data

Parcel ID 58 1 17 010	Account Number 37763
Property Owner NUNN FRED S	Property Location 3419 WHITE OAK CT
NUNN DARRYL O	Property Use Res - Single
Mailing Address 3419 WHITE OAK CT	Most Recent Sale Date 9/13/2002
	Legal Reference 13326-1015
City FAIRFAX	Grantor WINGER-BEARSKIN, MICHAEL H &
Mailing State VA Zip 22030	Sale Price 428,000
Parcel Zoning PD (Planned Development)	Land Area 0.113 acres
	Type Existing Single Family

Current Property Assessment

Card 1 Value	Land Value 221,100	Building Value 348,100	Total Value 569,200
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Building Description

Building Style Contemporary	# of Living Units 1	Flooring Type Hardwood
Year Built 1975	Roof Structure Gable	Heating Type Heat Pump
Building Grade Good	Roof Cover Composition	Heating Fuel ELECTRIC
Building Condition Average	Siding Mas vnr/sid	Air Conditioning 100%
Above Grade Floor Area (SF) 2267	Interior Walls Drywall	# of Fireplaces 2
Total Floor Area (SF) 2267	# of Bedrooms 3	# of Full Baths 3
Number Rooms 8	# of 1/2 Baths 1	

Legal Description

GREAT OAKS LOT 10 4918 SF 9756-0628

Narrative Description of Property

This property contains 0.113 acres of land mainly classified as Res - Single with a(n) Contemporary style building, built about 1975 , having Mas vnr/sid exterior and Composition roof cover, with 1 unit(s), 8 room(s), 3 bedroom(s), 3 bath(s), 1 half bath(s), 2 fireplace(s).

Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

Royal Legacy HOA
11351 Random Hills Road, Suite 500
Fairfax, VA 22030
Ph: 703.385.1133
Fax: 703.591.5785

May 2, 2014

Allynn Howe / Anne Wagner
10629 Legacy Ln
Fairfax VA 22030 US

Community Dev & Planning

JUL 17 2014
RECEIVED

FirstService
BUSINESS CENTER

RECEIVED

JUL 17 2014

Community Dev & Planning

Notice of Architectural Modification Request Approval

Dear Allynn Howe / Anne Wagner:

We are pleased to inform you that the Committee of Royal Legacy HOA has approved your application for the following item(s):

Fence, flagstone patio, stairs railing, add outlets & lights

The approval is contingent upon compliance with the specifications set forth in the approved application. Any changes or modifications to this approved request must be submitted in writing for the Association's review and consideration. Approval is subject to state, county and/or municipality laws and regulations as applicable. If the modification or addition requires a county permit, it must be obtained prior to construction.

Please retain this letter for your files. Should you have any questions regarding this letter, please contact us. We are available to assist you 09:00 AM - 05:30 AM at 703.385.1133 or via e-mail at arc.dcmetro@fsresidential.com.

Sincerely,

Architectural, Resale and Covenants Team
Armstrong Management Services, LLC.

You are required to obtain the signature of the two (2) property owners who will be most affected by the proposed change. Signature by your neighbors indicates an awareness of your proposed change and does not constitute approval or disapproval on their part.

Name: Duke & Terry Larkin
Address: 10631 Legacy Lane
Lot/Block: #23
Signature: Terry Larkin

Name: Adelaide Mwachaji
Address: 10625 Legacy Lane
Lot/Block: #1
Signature: Adelaide Mwachaji

Applicant hereby warrants that Applicant shall assume full responsibility for:

- (i) All landscaping, grading and/or drainage issues relating to the improvements (including replacing bonds or escrows posted by Developer currently in place affecting the lot)
- (ii) Obtaining all required City, Town or County approvals relating to said improvements.
- (iii) Complying with all applicable City, Town or County ordinances.
- (iv) Any damage to adjoining property (including common area) or injury to third persons associated with improvement.
- (v) Applicant hereby states that they have read the ARC guidelines and agree that all work performed will be in compliance with those guidelines.

[Signature]
Signature of Property Owner

4/22/14
Date

ARCHITECTURAL IMPROVEMENT REQUEST FORM

RECEIVED

Date Application Received: _____

JUL 17 2014

Community Dev & Planning

☒ APPROVED AS SUBMITTED

☐ APPROVED SUBJECT TO: _____

☐ SUSPENDED PENDING SUBMISSION OF: _____

☐ DISAPPROVED DUE TO: _____

[Signature]
Signature - ARC Member

4/30/14
Date

PROPOSED RESOLUTION NO. 2014- _____

RESOLUTION TO APPROVE THE REQUEST OF ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, FOR SPECIAL EXCEPTION TO CHAPTER 110 OF THE CITY CODE ON THE PREMISES KNOWN AS 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024.

WHEREAS, the request of Anne Wagner and Allyn Howe, property owners, and Stephen Fox, agent, has submitted Application No. CE-14090033 pursuant to City Code Section 110-369 requesting Special Exception City Code Section 110-680(a) to reduce the rear yard setback to 0.7-foot-wide.

WHEREAS, the Board of Zoning Appeals has carefully considered the application, the recommendation of the staff, and the testimony received at the public hearing; and

WHEREAS, the Board of Zoning Appeals has determined that the proposed Special Exception is appropriate because the proposal does meet the requisites established by City Code Sections 110-369 and 110-680(a) for the following reasons:

1. The applicant has clearly demonstrated that the zoning requirements will present a unique burden due to unusual topography, building design, or lot shape; and
2. The Board of Zoning Appeals has determined that the granting of the special exception will not be inconsistent with the Comprehensive Plan or the purpose of the zoning regulations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Fairfax on this seventh day of October, 2014, that Application No. CE-14090033 be and hereby is APPROVED.

Adopted this seventh day of October, 2014.

Attest:

Board of Zoning Appeals Secretary

PROPOSED RESOLUTION NO. NO. 2014- _____

RESOLUTION TO APPROVE THE REQUEST OF ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, FOR SPECIAL EXCEPTION TO CHAPTER 110 OF THE CITY CODE ON THE PREMISES KNOWN AS 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024.

WHEREAS, the request of Anne Wagner and Allyn Howe, property owners, and Stephen Fox, agent, has submitted Application No. CE-14090033 pursuant to City Code Section 110-369 requesting Special Exception and City Code Section 110-680(a) to reduce the rear yard setback to 0.7-foot-wide.

WHEREAS, the Board of Zoning Appeals has carefully considered the application, the recommendation of the staff, and the testimony received at the public hearing; and

WHEREAS, the Board of Zoning Appeals Council has determined that the proposed Special Exception is appropriate because the proposal does meet the requisites established by City Code Sections 110-369 and 110-680(a) for the following reasons:

1. The applicant has clearly demonstrated that the zoning requirements will present a unique burden due to unusual topography, building design, or lot shape; and
2. The Board of Zoning Appeals has determined that the granting of the special exception will not be inconsistent with the Comprehensive Plan or the purpose of the zoning regulations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Fairfax on this seventh day of October, 2014, that Application No. CE-14090033 be and hereby is APPROVED WITH CONDITIONS, as follows:

1. The applicant, and any future owners, successors and assigns of the property, shall ensure the patio remains in its current configuration as shown on the plat entitled Lot 24-Royal Legacy Commons, prepared by Christopher Consultants, dated 9/2/14 and submitted with this application.
2. The applicant shall submit to the Zoning Administrator for review and approval, a private storm drainage easement on the common open space to maintain their drainage outfall.
3. The applicant shall ensure the storm drain easement is recorded among the Land Records of Fairfax County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Fairfax on this seventh day of October, 2014, that Application No. CE-14090033 be and hereby is APPROVED.

Adopted this seventh day of October, 2014.

Attest:

Board of Zoning Appeals Secretary

The vote on the motion to adopt the resolution was recorded as follows:

	<u>Vote</u>
BZA member John O'Brien Clarke, Jr.	_____
BZA member Ellen Brouwer	_____
BZA member Edward C Calabria	_____
BZA member Robert Matthews	_____
BZA member Gary Perryman	_____

ATTACHMENT 8
Resolution for Denial
(Staff Recommendation)

PROPOSED RESOLUTION NO. 2014- _____

RESOLUTION TO DENY THE REQUEST OF THE ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, FOR SPECIAL EXCEPTION TO CHAPTER 110 OF THE CITY CODE ON THE PREMISES KNOWN AS 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024.

WHEREAS, the request of Anne Wagner and Allyn Howe, property owners, and Stephen Fox, agent, has submitted Application No. CE-14090033 requesting Special Exception from City Code Section 110-369 and 110-680(a) to reduce the rear yard setback to 0.7-foot-wide.

WHEREAS, the Board of Zoning Appeals has carefully considered the application, the recommendation of the staff, and the testimony received at the public hearing; and

WHEREAS, the Board of Zoning Appeals has determined that the proposed Special Exception is not appropriate because the proposal does not meet the requisites established by City Code Sections 110-369 and 110-680(a) for the following reasons:

- 1) The size and shape of the subject property is adequate for the existing residential structure; however the patio improvement has a negative effect on the surrounding properties because there is minimal vegetated space between the patio and the common open space and an adverse drainage condition has been created; and
- 2) The typical layout shown on the GDP precludes the applicant from locating the proposed improvements within the required rear yard setback or elsewhere on the lot.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Fairfax on this seventh day of October, 2014, that Application No. CE-14090033 be and hereby is DENIED.

Adopted this seventh day of October, 2014.

Attest:

Board of Zoning Appeals Secretary

The vote on the motion to adopt the resolution was recorded as follows:

Vote

BZA member John O'Brien Clarke, Jr.	_____
BZA member Ellen Brouwer	_____
BZA member Edward C Calabria	_____
BZA member Robert Matthews	_____
BZA member Gary Perryman	_____

**SAMPLE MOTION
FOR APPROVAL
(AS REQUESTED)**

I MOVE THAT THE BOARD OF ZONING APPEALS ADOPT THE ATTACHED RESOLUTION TO APPROVE THE REQUEST OF ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, PURSUANT TO CITY CODE SECTION 110-369, FOR A SPECIAL EXCEPTION FROM SECTION 110-680(a) TO REDUCE THE REAR YARD SETBACK TO 0.7 FOOT-WIDE (TO ALLOW AN EXISTING FLAGSTONE PATIO/TERRACE TO REMAIN) WHERE A 10 FOOT-WIDE MINIMUM REAR YARD SETBACK IS REQUIRED AS SHOWN IN THE TYPICAL LOT DETAIL ON THE APPROVED SITE PLAN FOR ROYAL LEGACY COMMONS IN THE RESIDENTIAL PLANNED DEVELOPMENT (RPD) DISTRICT ON THE PROPERTY LOCATED AT 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024.

**SAMPLE MOTION
FOR APPROVAL
WITH CONDITIONS**

I MOVE THAT THE BOARD OF ZONING APPEALS ADOPT THE ATTACHED RESOLUTION TO APPROVE THE REQUEST OF ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, PURSUANT TO CITY CODE SECTION 110-369, FOR A SPECIAL EXCEPTION FROM SECTION 110-680(a) TO REDUCE THE REAR YARD SETBACK TO 0.7 FOOT-WIDE (TO ALLOW AN EXISTING FLAGSTONE PATIO/TERRACE TO REMAIN) WHERE A 10 FOOT-WIDE MINIMUM REAR YARD SETBACK IS REQUIRED AS SHOWN IN THE TYPICAL LOT DETAIL ON THE APPROVED SITE PLAN FOR ROYAL LEGACY COMMONS IN THE RESIDENTIAL PLANNED DEVELOPMENT (RPD) DISTRICT ON THE PROPERTY LOCATED AT 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024, WITH THE FOLLOWING CONDITIONS:

1. The applicant, and any future owners, successors and assigns of the property, shall ensure the patio remains in its current configuration as shown on the plat entitled Lot 24-Royal Legacy Commons, prepared by Christopher Consultants, dated 9/2/14 and submitted with this application.
2. The applicant shall submit to the Zoning Administrator for review and approval, a private storm drainage easement on the common open space to maintain their drainage outfall.
3. The applicant shall ensure the storm drain easement is recorded among the Land Records of Fairfax County.

**SAMPLE MOTION
FOR DENIAL**
(Staff Recommendation)

I MOVE THAT THE BOARD OF ZONING APPEALS ADOPT THE ATTACHED RESOLUTION TO DENY THE REQUEST OF ANNE WAGNER & ALLYN HOWE, BY STEPHEN K. FOX, AUTHORIZED AGENT/ATTORNEY, PURSUANT TO CITY CODE SECTION 110-369, FOR A SPECIAL EXCEPTION FROM SECTION 110-680(a) TO REDUCE THE REAR YARD SETBACK TO 0.7 FOOT-WIDE (TO ALLOW AN EXISTING FLAGSTONE PATIO/TERRACE TO REMAIN) WHERE A 10 FOOT-WIDE MINIMUM REAR YARD SETBACK IS REQUIRED AS SHOWN IN THE TYPICAL LOT DETAIL ON THE APPROVED SITE PLAN FOR ROYAL LEGACY COMMONS IN THE RESIDENTIAL PLANNED DEVELOPMENT (RPD) DISTRICT ON THE PROPERTY LOCATED AT 10629 LEGACY LANE AND MORE PARTICULARLY DESCRIBED AS TAX MAP PARCEL 57-3-((20))-024, FOR THE FOLLOWING REASONS:

- 1) The size and shape of the subject property is adequate for the existing residential structure; however the patio improvement has a negative effect on the surrounding properties because there is minimal vegetated space between the patio and the common open space and an adverse drainage condition has been created; and
- 2) The typical layout shown on the GDP precludes the applicant from locating the proposed improvements within the required rear yard setback or elsewhere on the lot; and